

Serial No. 10/674,515
Reply to Office Action dated February 22, 2008

Docket No. 3655/0302PUS1

REMARKS/ARGUMENTS

Claims 1-5, 7-12 and 14 are pending in the above application.

The Office Action dated February 22, 2008, has been received and carefully reviewed. In that Office Action, claims 1-5, 7-12 and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Navarro in view of Phillips. Reconsideration and allowance of claims 1-5, 7-12 and 14 is respectfully requested in view of the following remarks.

As acknowledged in the Office Action, Navarro does not show or render obvious the invention of the pending claims. The Office Action therefore relies on Phillips to support the rejection of all claims. It is respectfully submitted, however, that Phillips is not prior art and therefore cannot be relied upon to support the present rejections. Because Navarro does not disclose each limitation of the pending claims and because Phillips is not prior art, all pending claims are submitted to be allowable.

The filing date of the Phillips reference is February 2, 2007, well after the September 30, 2003, filing date of the present application. Phillips claims domestic priority from multiple applications, some of which have filing dates earlier than the filing date of the present application. As provided in MPEP 2136.03, "For prior art purposes, a U.S. patent or patent application publication that claims the benefit of an earlier filing date under 35 U.S.C. 120 of a prior nonprovisional application would be accorded the earlier filing date as its prior art date under 35 U.S.C. 102 (e), provided the earlier-filed application properly supports the subject matter relied upon in any rejection in compliance with 35 U.S.C. 112, first paragraph. In other words, the subject matter used in the rejection must be disclosed in the earlier-filed application in compliance with 35 U.S.C. 112, first paragraph, in order for that subject matter to be entitled to the earlier

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filing date under 35 U.S.C. 102(e) (emphasis added)." It is therefore necessary to consider the disclosures of each of the applications from which Phillips claims priority to determine whether Phillips is entitled to an earlier filing date for the subject matter that allegedly renders the claims of the present application obvious.

The Phillips reference is a continuation of U.S. 10/676,418, filed September 30, 2003, the same day the present application was filed. The '418 application, therefore, is not prior art because it does not have a filing date earlier than the filing date of the present application. Establishing a September 30, 2003, priority date for the applied Phillips publication does not make the applied Phillips publication prior art.

The applied Phillips publication indicates that it is a "continuation-in-part" of numerous other patent applications. Each of the listed applications has been reviewed. It is respectfully submitted that none of these applications disclose or provide support for the concept of "determining that a user is a member of a class intended to receive an alert." The subject matter relied upon by the examiner in rejecting the pending claims does not have an effective date earlier than the filing date of the present application. Phillips is therefore not prior art and cannot be used as a reference. If the examiner maintains that Phillips is prior art, it is respectfully requested that the examiner identify by column and line number the portion or portions of the priority documents that support an early filing date for the "member of a class intended to receive an alert" limitation referred to above.

Navarro does not show or suggest every limitation of claim 1 and cannot be used by itself to reject claim 1. Phillips is not prior art. A prima facie case of obviousness has therefore not been presented in connection with claim 1, and claim 1 is submitted to be allowable for at least this reason. Phillips is also used to reject claims 2-5, 7-12

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and 14. Because Phillips is not prior art, these claims are also submitted to be allowable.

CONCLUSION

Each issue raised in the Office Action dated February 22, 2008, has been addressed, and it is believed that claims 1-5, 7-12 and 14 are in condition for allowance. Wherefore, reconsideration and allowance of these claims is earnestly solicited. If the examiner believes that any additional changes would place the application in better condition for allowance, the examiner is invited to contact Scott Wakeman (Reg. No. 37,750) at the telephone number listed below.

Deposit Account Authorization

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3828 and please credit any excess fees to such deposit account.

Respectfully submitted,



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